

**Letter of Findings Number: 01-20120729P
Late Payment Penalty
For the Period 2011**

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ISSUE

I. Tax Administration – Late Payment Penalty and Interest.

Authority: IC § 6-8.1-6-1; IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayers protest the imposition of the ten percent late payment penalty.

STATEMENT OF FACTS

Taxpayers filed an extension for their 2011 tax return, which was received by the Department on April 23, 2012. The extension was granted because a federal extension had been granted. When Taxpayers did not pay the amount due, the Department assessed interest and a penalty for late payment of income tax in October 2012. Taxpayers protested the penalty and requested that the interest be recalculated. An administrative hearing was held. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Tax Administration – Late Payment Penalty and Interest.

DISCUSSION

Taxpayers protest the imposition of a penalty for late payment of his income tax.

Under IC § 6-8.1-6-1:

(a) If a person responsible for filing a tax return is unable to file the return by the appropriate due date, he may petition the department, before that due date, for a filing extension. The person must include with the petition a payment of at least ninety percent (90 [percent]) of the tax that is reasonably expected to be due on the due date. When the department receives the petition and the payment, the department shall grant the person a sixty (60) day extension.

(b) If a person responsible for filing a tax return has received an extension of the due date and is still unable to file the return by the extended due date, he may petition the department for another extension. The person must include in the petition a statement of the reasons for his inability to file the return by the due date. If the department finds that the person's petition is proper and that the person has good cause for requesting the extension, the department may extend the person's due date for any period that the department deems reasonable under the circumstances. The department may allow additional, successive extensions if the person properly petitions for the extension before the end of his current extension period.

(c) If the Internal Revenue Service allows a person an extension on his federal income tax return, the corresponding due dates for the person's Indiana income tax returns are automatically extended for the same period as the federal extension, plus thirty (30) days. However, the person must pay at least ninety percent (90 [percent]) of the Indiana income tax that is reasonably expected to be due on the original due date by that due date, or he may be subject to the penalties imposed for failure to pay the tax.

(d) Any tax that remains unpaid during an extension period accrues interest at a rate established under [IC 6-8.1-10-1](#) from the original due date, but that tax will not accrue any late payment penalties until the extension period has ended.

Thus, a taxpayer who makes a payment of at least ninety percent of the ultimate tax liability for a year prior to the due date for that year's return is not subject to underpayment penalties unless the taxpayer fails to pay the difference at or prior to the extension deadline. If the payment made prior to the original due date is less than ninety percent of the ultimate tax liability for a year, the taxpayer is potentially subject to penalties.

There is a question as to whether Taxpayers submitted a check with Taxpayers' extension request in April 2012. Taxpayers claims that a check was sent to the Department, but that it was not deposited by the Department. Taxpayers claim to have subsequently cancelled the check and issued the Department a second check in September 2012 when they noticed it had not been deposited. Taxpayer also submitted a third check to cover the remaining amount owed, with self-assessed penalty and interest.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the Taxpayers by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as

negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

As for the calculation of interest, IC § 6-8.1-10-1 states in part as follows:

(a) If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

(b) The interest for a failure described in subsection (a) is the adjusted rate established by the commissioner under subsection (c) from the due date for payment.

Under IC § 6-8.1-10-1, interest runs from the "due date for payment." Taxpayer filed for an extension, but, despite the extension, Taxpayers owed interest from April 15, 2012, because the payment was due on April 15, 2012. Taxpayers have not shown how interest should be calculated.

Prior to the hearing, Taxpayers presented documentation in the form of ledger entries, showing separate entries for a check dated April 16, and then an entry for the replacement check in September 2012. However, after the hearing, the Department requested information from the bank showing a stop payment on the April 16 check or some other information from the bank showing that the check existed and had been cancelled. Taxpayers did not provide such information. Consequently, they have not met their burden for waiver of the late payment penalty.

FINDING

Taxpayers' protest is respectfully denied.

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